

BEFORE THE ARKANSAS CEMETERY BOARD

IN THE MATTER OF:

**CEMETERY HOLDINGS, LLC,
doing business in Arkansas as:**

ORDER NO. C-05-022-05 OR01

**EDGEWOOD MEMORIAL PARK – NORTH LITTLE ROCK
MEMORIAL PARK CEMETERY – PINE BLUFF
REST HAVEN MEMORIAL GARDENS – EL DORADO
ARLINGTON MEMORIAL PARK CEMETERY – EL DORADO**

ORDER

A hearing was held before the Arkansas Cemetery Board during its Second Quarterly Meeting of 2005 on June 10, 2005 in Little Rock, Arkansas. The staff of the Arkansas Securities Department had alleged that the licensee, Cemetery Holdings, LLC, had violated certain provisions of the Arkansas Cemetery Act for Perpetually Maintained Cemeteries. The Securities Department staff appeared by and through its attorney, Mike Spades, Jr. Cemetery Holdings, LLC appeared through its Arkansas manager, Randall Davis, and through its financial consultant, Wayne Fuquay, both of whom testified. Cemetery Holdings, LLC was not represented by counsel, and its president, Mike W. Graham, Jr., did not appear. Upon consideration of the testimony of the witnesses, the exhibits, and all other matters presented, the Board, being well and sufficiently advised as to all matters of fact and law, hereby finds, concludes and rules as follows:

FINDINGS OF FACT

1. Cemetery Holdings, LLC is the owner of four licensed perpetual care cemeteries in Arkansas, those being Edgewood Memorial Park in North Little Rock, Memorial Park Cemetery in Pine Bluff, Rest Haven Memorial Gardens in El Dorado, and Arlington Memorial Park Cemetery in El Dorado.
2. Cemetery Holdings, LLC is owned and operated by its president, Mike W. Graham, Jr., whose offices are located at 2121 Sage Road, Suite 123, Houston, Texas 77056. Cemetery Holdings, LLC has been licensed to operate these cemeteries in Arkansas since 2001.
3. The evidence reflects that Cemetery Holdings, LLC has failed to make the required deposits to its perpetual care trust fund accounts of three of its Arkansas cemeteries. The trust fund shortages are as follows:

Memorial Park Cemetery	Pine Bluff	3206.25
Rest Haven Memorial Gardens	El Dorado	2630.00
Arlington Memorial Park Cemetery	El Dorado	9990.00

4. The evidence reflects that Cemetery Holdings, LLC has failed to care for, properly maintain, and preserve each of its Arkansas cemeteries, those being:

Edgewood Memorial Gardens	North Little Rock
Memorial Park Cemetery	Pine Bluff
Rest Haven Memorial Gardens	El Dorado
Arlington Memorial Park Cemetery	El Dorado

5. The evidence reflects that Cemetery Holdings, LLC, by and through its Arkansas licensed perpetual care cemeteries, has solicited and received funds from

Arkansas consumers for gravesite merchandise such as markers, vases, and nameplates that have never been delivered or installed, and for which no refund has been issued to the consumers. The evidence reflects that this practice has occurred at each of the Arkansas cemeteries owned by Cemetery Holdings, LLC. Complaints submitted to the Securities Department staff as of June 9, 2005 indicate the value of “known” incidents of undelivered merchandise as follows:

Edgewood Memorial Park	North Little Rock	3014.21
Memorial Park Cemetery	Pine Bluff	4447.43
Rest Haven Memorial Gardens	El Dorado	245.81
Arlington Memorial Park Cemetery	El Dorado	280.00

6. The evidence reflects that from the time period beginning January 1, 2005 through June 9, 2005, the staff of the Arkansas Securities Department has received a total of 67 complaints against Cemetery Holdings, LLC and its Arkansas cemeteries. Those complaints are categorized as follows:

Edgewood Memorial Park	North Little Rock	26
Memorial Park Cemetery	Pine Bluff	20
Rest Haven Memorial Gardens	El Dorado	6
Arlington Memorial Park Cemetery	El Dorado	15

The consumer complaints referenced above allege a lack of maintenance at the cemeteries, undelivered merchandise, damaged grave markers, and unresponsive management. Many of the affected individuals and complainants referenced above were present at the hearing. All persons present were given an opportunity to state their complaints, concerns, and comments on the record.

CONCLUSIONS OF LAW

7. The Arkansas Cemetery Act for Perpetually Maintained Cemeteries provides, among other things, a requirement that each perpetual care cemetery maintain a permanent maintenance fund for perpetual care of the cemetery.

Ark. Code Ann. 20-17-1013, et seq. This requirement is designed to “protect the public by provisions designed to promote the stability and solvency of the cemetery companies”. **Skinner v. Berry, 266 Ark. 91, 583 S.W.2d 27 (1979).**

8. Each cemetery company doing business in Arkansas is required to deposit not less than ten per cent (10%) of the gross proceeds of each sale into a permanent maintenance fund in the time and manner as set forth in **Ark. Code Ann. Section 20-17-1016.**

8. If the cemetery company fails to make the required deposits in accordance with the law, the cemetery company shall be liable for and the Cemetery Board may require as an additional contribution to the permanent maintenance fund of ten dollars (\$10) per day for the period of the failure, up to a total additional contribution of five thousand dollars (\$5000). **Ark. Code Ann. 20-17-1016**

(c) (1).

9. Whenever any cemetery company fails to properly care for and maintain or preserve the cemetery, the Cemetery Board may require additional contributions to the permanent maintenance fund of the cemetery in an amount not to exceed three

thousand dollars (\$3000). **Ark. Code Ann. Section 20-17-1006 (7).**

10. In addition to its power to suspend or revoke the permit of a cemetery company as set forth in **Ark. Code Ann. Section 20-17-1006**, the Arkansas Cemetery Board may impose alternative sanctions upon the cemetery company, including the placement of conditions or restrictions upon regulated activities of the company. **Ark. Code Ann. Section 25-15-217 (a) and (b).**

OPINION

11. Cemetery Holdings, LLC, the licensee and owner of Edgewood Memorial Park in North Little Rock, Memorial Park Cemetery in Pine Bluff, Rest Haven Memorial Gardens in El Dorado, and Arlington Memorial Park Cemetery in El Dorado, has failed to make the required deposits into the perpetual care trust fund accounts of three of its Arkansas cemeteries in the amounts set forth in Paragraph 3, above.

12. Cemetery Holdings, LLC has failed to care for, properly maintain, and preserve each of its four Arkansas perpetual care cemeteries, as set forth in Paragraph 4, above.

13. Cemetery Holdings, LLC, by and through its Arkansas licensed perpetual care cemeteries, has solicited and received funds from Arkansas consumers for the purchase of gravesite merchandise such as markers, vases, and nameplates that have not been delivered or installed, and for which no refund has been issued.

ORDER

Cemetery Holdings, LLC and its President, Mike W. Graham, Jr., are hereby

ORDERED AND DIRECTED to do the following:

- a) Cure the shortage in the permanent maintenance trust fund account of Memorial Park Cemetery in Pine Bluff, Arkansas by depositing the sum of \$3206.25 into said account within thirty (30) days of the date of this order.
- b) Cure the shortage in the permanent maintenance trust fund account of Rest Haven Memorial Gardens in El Dorado, Arkansas by depositing the sum of \$2630.00 into said account within thirty (30) days of the date of this order.
- c) Cure the shortage in the permanent maintenance trust fund account of Arlington Memorial Park Cemetery in El Dorado, Arkansas by depositing the sum of \$9990.00 into said account within thirty (30) days of the date of this order.
- d) Deposit an additional sum of \$5000.00 into the permanent maintenance trust fund account of Rest Haven Memorial Gardens in El Dorado, Arkansas for failure to make the required deposits into said account. Said deposit shall be made within thirty (30) days of the date of this order.
- e) Deposit an additional sum of \$5000.00 into the permanent maintenance trust fund account of Arlington Memorial Park Cemetery in El Dorado, Arkansas for failure to make the required deposits into said account. Said deposit shall be made within thirty (30) days of the date of this order.
- f) Deposit the sum of \$3000.00 into the permanent maintenance trust fund account of Edgewood Memorial Gardens in North Little Rock, Arkansas for failure to properly care for, maintain and preserve said cemetery. Said deposit shall be made within thirty (30) days of the date of this order.

- g) Deposit the sum of \$3000.00 into the permanent maintenance trust fund account of Memorial Park Cemetery in Pine Bluff, Arkansas for failure to properly care for, maintain, and preserve said cemetery. Said deposit shall be made within thirty (30) days of the date of this order.
- h) Deposit the sum of \$3000.00 into the permanent maintenance trust fund account of Rest Haven Memorial Gardens in El Dorado, Arkansas for failure to properly care for, maintain, and preserve said cemetery. Said deposit shall be made within thirty (30) days of the date of this order.
- i) Deposit the sum of \$3000.00 into the permanent maintenance trust fund account of Arlington Memorial Park Cemetery in El Dorado, Arkansas for failure to properly care for, maintain, and preserve said cemetery. Said deposit shall be made within thirty (30) days of the date of this order.


IT IS FURTHER ORDERED that Cemetery Holdings, LLC and its officers and agents shall hereby CEASE AND DESIST from any and all acts, efforts, or conduct intended to solicit or receive funds from Arkansas consumers for cemetery merchandise, such as grave markers, vases, and nameplates until such time as Cemetery Holdings, LLC shall submit proof satisfactory to the Arkansas Cemetery Board that all such previously sold merchandise, known or unknown to the Cemetery Board, has been delivered or installed, or that refunds for such merchandise have been remitted to the consumers. A copy of this order and copies of all such complaints received shall be forwarded to the Arkansas Insurance Department for review.


IT IS FURTHER ORDERED that Mike W. Graham, Jr. shall appear before the Arkansas Cemetery Board with certain corporate financial records within twenty (20) days of the date of this order.

IT IS FURTHER ORDERED that failure to comply with this order within the time and in the manner described herein may result in the initiation of proceedings before the Circuit Court of Pulaski County, Arkansas to enforce compliance with this order, and for any all other appropriate relief.

IT IS SO ORDERED.

DATED THIS 29th DAY OF JUNE, 2005.


Betty Finley, Chairperson
Arkansas Cemetery Board


Michael B. Johnson, Secretary
Arkansas Cemetery Board